

Message Text

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TO AMEMBASSY GUATEMALA

AMEMBASSY MEXICO BY POUCH

AMEMBASSY SAN SALVADOR BY POUCH

AMEMBASSY TEGUCIGALPA BY POUCH

AMEMBASSY MANAGUA BY POUCH

AMEMBASSY SAN JOSE BY POUCH

AMEMBASSY PANAMA BY POUCH

AMEMBASSY CARACAS BY POUCH

AMEMBASSY BOGOTA BY POUCH

AMEMBASSY QUITO BY POUCH

AMEMBASSY LIMA BY POUCH

AMEMBASSY SANTIAGO BY POUCH

AMEMBASSY BUENOS AIRES BY POUCH

AMEMBASSY MONTEVIDEO BY POUCH

AMEMBASSY BRASILIA BY POUCH

AMCONSUL RIO DE JANEIRO BY POUCH

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TAGS: ETRN, GT, US

SUBJECT: US- GUATEMALA SHIPPING PROBLEMS

REF: GUATEMALA 1750

1. EMBASSY REFTTEL RIGHTFULLY CITES QUESTIONS REGARDING CONSISTENCY OF US SHIPPING POLICY RAISED BY ARTICLE IN DIARIO DE CENTRO AMERICA. WITHOUT TEXT OF DIARIO ARTICLE WE UNABLE TO DETERMINE TO WHAT EXTENT IT CONFORMS WITH ORIGINAL TEXT OF ARTICLE PROVIDED BY USIA, WHICH REGRETTABLY NOT CLEARED WITH RELEVANT POLICY OFFICES. ARTICLE DOES GLOSS OVER SOME OF COMPLEX ISSUES INVOLVED IN POOLING AND EQUAL ACCESS AGREEMENTS, AS FOR EXAMPLE WHAT CONSTITUTES GOVERNMENT- CONTROLLED CARGO. DEPARTMENT CONSIDERS DISTRIBUTION OF ARTICLE UNFORTUNATE, ESPECIALLY IN GUATEMALA WHERE IT MAY COMPLICATE EFFORTS TO RESOLVE OUR SHIPPING PROBLEMS IN THAT COUNTRY.

2. IN ADDITION TO GUIDANCE PROVIDED BELOW, DEPARTMENT HAS AIRPOUCHED EMBASSY A COPY OF CA-1689, US POLICY ON POOLING AGREEMENTS BETWEEN SHIPPING LINES, APRIL 8, 1971, WHICH WAS PREPARED IN LIGHT OF FMC APPROVAL OF US- BRAZILIAN POOLING AGREEMENTS. WHEN TAKEN TOGETHER WITH A-8762 OF AUGUST 28, 1972, CA-1689 IS STILL APPLICABLE AND CONTAINS GUIDANCE APPROPRIATE TO PERUVIAN POOLING SITUATION.

3. US SHIPPING LEGISLATION AND MARITIME POLICY CONTINUE TO BE PREDICATED ON THE PREMISE THAT REASONABLE COMPETITION AND NONDISCRIMINATION AMONG CARRIERS BEST SERVE THE DEVELOPMENT OF EFFICIENT SHIPPING SERVICES AND THE EXPANSION OF TRADE. WITHIN UNCTAD, HOWEVER, WE HAVE SUPPORTED THE DESIRE OF DEVELOPING COUNTRIES TO HAVE A SUBSTANTIAL AND INCREASING PARTICIPATION IN THE CARRIAGE OF THEIR FOREIGN TRADE AND AGREED THAT THEY SHOULD BE ABLE TO ADOPT SUCH MEASURES AS MAY BE APPROPRIATE TO PERMIT THEIR SHIPOWNERS TO COMPETE IN THE INTERNATIONAL FREIGHT MARKET AND THUS CONTRIBUTE TO A SOUND DEVELOPMENT OF SHIPPING. WE HAVE, NONETHELESS, URGED THAT GOVERNMENTS TAKE INTO ACCOUNT THE FACT THAT THEIR FOREIGN COMMERCE AND THE ARRANGEMENTS FOR TRANSPORTING IT ARE OF EQUAL CONCERN TO THEIR TRADING PARTNERS, WHOSE TRADE AND SHIPPING INTERESTS ARE EQUALLY INVOLVED. USG HAS THUS GENERALLY
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OPPOSED FOREIGN GOVERNMENT CARGO RESERVATION MEASURES AFFECTING COMMERCIAL TRADE ON GROUNDS THEY POTENTIALLY DETRIMENTAL TO BOTH OUR TRADES AND CARRIER INTERESTS. THUS EMBASSY APPROACH (PARA. 2 REFTTEL) HAS BEEN SOUNDLY BASED.

4. EMBASSY' S QUESTION ABOUT GOVERNMENT- CONTROLLED CARGOES HIGHLIGHTS LACK OF ANY INTERNATIONALLY- AGREED DEFINITION OR UNDERSTANDING OF WHAT CONSTITUTES SUCH CARGOES. THE USG CONSIDERS THAT ITS GOVERNMENT- CONTROLLED CARGOES, UNDER OUR CARGO PREFERENCE LAWS, ARE ONLY THOSE WHICH ARE GOVERNMENT- OWNED, - FINANCED OR - IMPELLED, AND

WHICH IT CAN BE REASONABLY ARGUED WOULD NOT MOVE EXCEPT FOR GOVERNMENT SUPPORT AND OVER WHICH THEREFORE THE GOVERNMENT CAN BE EXPECTED TO HAVE CERTAIN RIGHTS AS A SHIPPER AND ON THE ROUTING (CHOICE OF VESSELS) THEREOF. US LAW REQUIRES AT LEAST 50 PER CENT OF SOME (AID CARGOES UNDER PL 664 AND CERTAIN PL 480 CARGOES) AND 100 PER CENT (EXIM BANK FINANCED CARGOES UNDER PR-17) OF OTHER USG SPONSORED CARGOES TO MOVE ON US FLAG VESSELS. IN CASE OF EXIM BANK CARGOES, A WAIVER OF UP TO 50 PER CENT MAY BE GRANTED BY THE MARITIME ADMINISTRATION AT THE REQUEST OF THE RECIPIENT COUNTRY PROVIDED US FLAG VESSELS RECEIVE RECIPROCAL TREATMENT. BY CONTRAST MANY LA GOVERNMENTS HAVE EXTENDED THE CONCEPT OF GOVERNMENT- CONTROLLED CARGOES WELL BEYOND THE US DEFINITION AND HAVE SIMPLY DESIGNATED A CERTAIN PERCENTAGE OF COMMERCIAL CARGOES, OVER WHICH THERE MAY BE NO DIRECT GOVERNMENT INTEREST OR INVOLVEMENT, AS RESERVED FOR NATIONAL FLAG VESSELS. PERU IS ONE SUCH EXAMPLE OF THE LATTER. THIS TYPE OF FLAG DISCRIMINATION HAS CREATED SERIOUS PROBLEMS FOR BOTH THE US AND THIRD- FLAG LINES CARRYING OUR LATIN AMERICAN TRADE.

5. WHILE NOT ENDORSING ANY CONCEPT OF CARGO PREFERENCE WHICH EXTENDS TO WHAT WE CONSIDERED COMMERCIAL CARGOES WE HAVE, IN PROTECTION OF OUR CARRIERS ADVERSELY AFFECTED BY LA RESERVATION OF WHAT LA'S HAVE DESIGNATED AS GOVERNMENT- CONTROLLED CARGOES TO THEIR OWN LINES, INSISTED IN DIPLOMATIC AND COMMERCIAL NEGOTIATIONS WITH FOREIGN GOVERNMENTS AND CARRIERS THAT OUR CARRIERS HAVE " EQUAL ACCESS" TO SUCH GOVERNMENT- CONTROLLED CARGOES. WE LIMITED OFFICIAL USE
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IN TURN HAVE ATTEMPTED WHERE APPROPRIATE TO PROVIDE EQUAL ACCESS TO US GOVERNMENT- CONTROLLED CARGOES TO THEIR NATIONAL CARRIERS ON A RECIPROCAL BASIS. (WE RECOGNIZE THAT THIS APPROACH BEGS THE QUESTION OF WHAT APPROPRIATELY SHOULD BE CONSIDERED GOVERNMENT- CONTROLLED CARGOES, BUT IN LIGHT OF ANY INTERNATIONALLY- AGREED DEFINITION, CONSIDER THAT THIS APPROACH DOES LEAST VIOLENCE TO PRINCIPLES STATED PARA. 3 ABOVE).

6. US HAS TRADITIONALLY BEEN SKEPTICAL OF OCEAN POOLING ARRANGEMENTS BUT, AS INDICATED CA-1689, IN LIGHT OF SITUATION CREATED BY A) FOREIGN GOVERNMENT DISCRIMINATORY ACTION OR B) WIDESPREAD MALPRACTICES IN TRADE, FMC HAS INCREASINGLY, IF SOMETIMES RELUCTANTLY, APPROVED POOLING AGREEMENTS BETWEEN LINES WHICH APPEARED TO CONSTITUTE LESSER EVIL. USG PREFERS POOLING AGREEMENTS WHICH INTERFERE LEAST WITH COMPETITION AND THUS PROTECT THE INTERESTS OF SHIPPERS AS WELL AS SHIPOWNERS. IN THE LA TRADES, THE FMC HAS APPROVED AGREEMENTS WHICH SIMPLY PROVIDE EQUAL ACCESS BY EACH SIDE TO GOVERNMENT- CONTROLLED

CARGOES AND WHICH DO NOT RESTRICT THE FREEDOM OF THIRD FLAGS TO COMPETE FOR NORMAL COMMERCIAL CARGOES. IT HAS ALSO APPROVED BROADER POOLING AGREEMENTS WHICH DIVIDE REVENUES BETWEEN THE CARRIERS OF THE TRADING PARTNERS WITH RESPECT TO THE TRAFFIC THEY CARRY. THESE ARRANGEMENTS ARE ESSENTIALLY BETWEEN THE COMMERCIAL PARTIES AND FMC APPROVAL OF THEM DOES NOT CONSTITUTE USG ENDORSEMENT OF THE FOREIGN GOVERNMENT CARGO RESERVATION MEASURE THAT MAY HAVE IMPELLED- THE US CARRIER TO SEEK THE POOLING ARRANGEMENT.

7. IN THE PERUVIAN SITUATION, US- GOVERNMENT IMPELLED CARGOES FROM US WEST COAST COMPRISE APPROXIMATELY 10 PER CENT OF THE SOUTHBOUND TRADE. HOWEVER, THE US CARRIER, PRU- GRACE, WAS CONFRONTED WITH A SERIES OF PERUVIAN CARGO RESERVATION DECREES DESIGNED TO UNDERWRITE

THE DEVELOPMENT OF THE PERUVIAN MERCHANT MARINE. THESE DECREES RESERVE TO PERUVIAN FLAG VESSELS UP TO 50 PER CENT OF ALL EXPORT/IMPORT, INCLUDING COMMERCIAL CARGOES, AND 100 PER CENT OF CARGOES PURCHASES BY THE GOP AND RELATED LIMITED OFFICIAL USE
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GOVERNMENT BODIES AND THOSE ENJOYING VARIOUS TYPES OF FISCAL EXONERATIONS. THE IMPLEMENTATION OF THESE LAWS ADVERSELY AFFECTED THE US LINE BY REDUCING ITS ACCESS TO CARGOES AND AS A RESULT PRU- GRACE CONCLUDED AN EQUAL ACCESS AND REVENUE POOLING AGREEMENT WITH COMPANIA PERUANA DE VAPORES (CPV) TO PROTECT ITS INTERESTS AND CARRIAGE IN THE TRADE. THE AGREEMENT ESTABLISHES SAILING REQUIREMENTS, EQUAL ACCESS TO GOVERNMENT- CONTROLLED CARGO AND 50/50 POOLING OF REVENUE OF ALL CARGO CARRIED SOUTHBOUND FROM THE US WEST COAST. PRU- GRACE IS ACCORDED THE STATUS OF A PERUVIAN FLAG LINE SOUTHBOUND, AND CPV HAS THE RIGHT TO PARTICIPATE EQUALLY WITH THE US FLAG CARRIER IN THE CARRIAGE OF CARGO CONTROLLED BY THE USG. WHILE THE THIRD FLAG CARRIERS IN THE TRADE DO NOT HAVE ACCESS TO GOVERNMENT- CONTROLLED CARGOES OF EITHER PARTY, THEY ARE NOT PRECLUDED FROM THE CARRIAGE OF OTHER CARGOES. AS THE FMC NOTES IN ITS DECISION IT IS NOT ITS APPROVAL OF THE AGREEMENT BUT RATHER THE GOP DECREES WHICH HAVE DEPRIVED THIRD FLAG CARRIERS OF ACCESS TO WHAT WE CONSIDER COMMERCIAL CARGOES BUT WHAT THE GOP HAS DESIGNATED AS GOVERNMENT- CONTROLLED.

8. WHILE THERE MAY BE, AS IMPLIED IN PARA. 2 REFTTEL, SOME PARALLEL IN ACTIVITIES IN GUATEMALA AND IN OTHER LA COUNTRIES, WE SEE IMPORTANT DISTINCTIONS. FIRST, AS A PRACTICAL MATTER, ABSENCE OF A US- FLAG CARRIER IN GUATEMALAN TRADE HAS MEANT THAT DISCRIMINATORY PRACTICES DID NOT DIRECTLY AFFECT US SHIPPING INTERESTS, ALTHOUGH

THEY MAY WELL HAVE ADVERSELY AFFECTED US TRADE
INTERESTS. SECOND, WE DO NOT RECALL HAVING ENCOUNTERED,
AT LEAST RECENTLY, ROYALTY PAYMENT REQUIREMENT FOR
CARRYING CARGO AS IS EXACTED BY FLOMERCA. WHILE THIS
MIGHT NOT HAVE A SUBSTANTIALLY DIFFERENT PRACTICAL
FINANCIAL EFFECT FROM A DIRECT GOVERNMENT TAX, IT
DISTORTS COMPETITION BY ASSIGNING THE FINANCIAL BENEFITS
TO ONE OF THE COMPETITORS, AND IT IS AN OUTRIGHT
RESTRICTION ON THE FREEDOM OF COMMERCIAL SHIPPING TO SERVE
CERTAIN TRADE ROUTES. THIRD, THE CARGO RESERVATION
MEASURES ENVISAGED BY THE GOG APPEAR MORE DIRECTED TO
INCREASING THE ROYALTY RAKEOFF THAN DESIGNED TO BUILD UP
THE GUATEMALAN MERCHANT MARINE. WHILE, AS DESCRIBED
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ABOVE, WE HAVE OPPOSED FOREIGN CARGO RESERVATION
MEASURES AS DISCRIMINATORY, WE RECOGNIZE THAT LDC' S
THEMSELVES CONSIDER THEIR MERCHANT MARINE BUILD- UP
OBJECTIVES AS JUSTIFICATION FOR CARGO RESERVATION.

9. FINALLY, RE LAST SENTENCE PARA. 2 REFTEL, (LA SHIPPING)
DISCRIMINATION HAS NOT AT ALL BEEN FAVORABLE TO US
INTERESTS BUT HAS CAUSED SERIOUS INJURY TO NUMBER OF US
SHIPPING LINES. POOLING ARRANGEMENTS HAVE CONSTITUTED
COMPROMISE AND OFTEN NOT SATISFACTORY MODUS OPERANDI FOR
US INTERESTS IN FACE OUR INABILITY OFTEN TO GET LA
GOVERNMENTS TO ROLL BACK DISCRIMINATORY MEASURES. US
CARRIERS ARE GENERALLY CARRYING LOWER PERCENTAGE OF TRADE
NOW THAN THEY WERE BEFORE LA GOVERNMENTS BEGAN ADOPTING
CARGO RESERVATION MEASURES (ALTHOUGH OF COURSE OTHER
FACTORS ARE INVOLVED ALSO). ROGERS

NOTE BY OC/ T: POUCHED ABOVE ADDRESSEES.

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